

Message Text

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ACTION L-03

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TAGS: ICRC, PARM

SUBJECT: GENEVA CONFERENCE ON LAW OF WAR

1. ON MARCH 21, COMMITTEE III OF SUBJECT CONFERENCE ADOPTED WITHOUT VOTE, AS REPORTED OUT FROM WORKING GROUP, TEXTS OF ARTICLES 43 AND 45 OF PROTOCOL I AND ARTICLES 24 AND 25 OF PROTOCOL II. TEXTS FOLLOW. INDIAN MOTION NOT TO HAVE ANY VOTES AND MERELY TO NOTE REPORT OF WORKING GROUP FAILED BY VOTE OF 13-44(US)-9.

2. ARTICLE 43: "IN ORDER TO ENSURE RESPECT AND PROTECTION FOR THE CIVILIAN POPULATION AND CIVILIAN OBJECTS, THE PARTIES TO THE CONFLICT SHALL AT ALL TIMES DISTINGUISH BETWEEN THE CIVILIAN POPULATION AND COMBATANTS AND BETWEEN CIVILIAN OBJECTS AND MILITARY OBJECTIVES AND ACCORDINGLY SHALL DIRECT THEIR OPERATIONS ONLY AGAINST MILITARY OBJECTIVES."

3. ARTICLE 45: "1. A CIVILIAN IS ANYONE WHO DOES NOT BELONG TO ONE OF THE CATEGORIES OF PERSONS REFERRED TO IN ARTICLE 4 (A) (1), (2), (3) AND (6) OF THE THIRD CONVENTION AND IN ARTICLE 42 OF THE PRESENT PROTOCOL.

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"2. THE CIVILIAN POPULATION COMPRISES ALL PERSONS

WHO ARE CIVILIANS.

"3. THE PRESENCE, WITHIN THE CIVILIAN POPULATION, OF INDIVIDUALS WHO DO NOT FALL WITHIN THE DEFINITION OF CIVILIANS DOES NOT DEPRIVE THE POPULATION OF ITS CIVILIAN CHARACTER.

"4. IN CASE OF DOUBT AS TO WHETHER A PERSON IS A CIVILIAN, SUCH PERSON SHALL BE CONSIDERED TO BE A CIVILIAN."

4. ARTICLE 24: "IN ORDER TO ENSURE RESPECT AND PROTECTION FOR THE CIVILIAN POPULATION AND CIVILIAN OBJECTS, THE PARTIES TO THE CONFLICT SHALL AT ALL TIMES DISTINGUISH BETWEEN THE CIVILIAN POPULATION AND COMBATANTS AND BETWEEN CIVILIAN OBJECTS AND MILITARY OBJECTIVES AND ACCORDINGLY, SHALL DIRECT THEIR OPERATIONS ONLY AGAINST MILITARY OBJECTIVES."

5. ARTICLE 25: "1. A CIVILIAN IS ANYONE WHO IS NOT A MEMBER OF THE ARMED FORCES OR OF AN ORGANIZED ARMED GROUP.

"2. THE CIVILIAN POPULATION COMPRISES ALL PERSONS WHO ARE CIVILIANS.

"3. THE PRESENCE, WITHIN THE CIVILIAN POPULATION, OF INDIVIDUALS WHO DO NOT FALL WITHIN THE DEFINITION OF CIVILIANS DOES NOT DEPRIVE THE POPULATION OF ITS CIVILIAN CHARACTER.

"4. IN CASE OF DOUBT AS TO WHETHER A PERSON IS A CIVILIAN, SUCH PERSON SHALL BE CONSIDERED TO BE A CIVILIAN."

6. ON ARTICLE 44, PARAGRAPH 2, COMMITTEE RETAINED WORDS "AGAINST THE ADVERSARY" BY VOTE OF 18-38(US)-10 AND THEN ADOPTED ENTIRE PARAGRAPH IN FOLLOWING FORM BY VOTE OF 51(US)-1-8: "ATTACKS MEANS ACTS OF VIOLENCE COMMITTED AGAINST THE ADVERSARY, WHETHER IN DEFENCE OR OFFENCE."

7. COMMITTEE ADOPTED FOLLOWING WORDING FOR PARAGRAPH 3 OF ARTICLE 44 BY VOTE OF 73(US)-0-2: "THE PROVISIONS OF THE PRESENT SECTION ARE IN ADDITION TO THE RULES WITH RESPECT TO JUMANITARIAN PROTECTION CONTAINED IN THE FOURTH CONVENTION, PARTICULARLY PART II THEREOF, AND IN SUCH OTHER INTERNATIONAL CONVENTIONS AS MAY BE BINDING UPON THE HIGH UNCLASSIFIED

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CONTRACTING PARTIES, AS WELL AS OTHER RULES OF INTERNATIONAL LAW RELATING TO THE PROTECTION OF CIVILIANS AND CIVILIAN OBJECTS ON LAND, ON SEA, OR IN THE AIR, AGAINST THE EFFECTS OF HOSTILITIES."

8. WITH REGARD TO PARAGRAPH 1, COMMITTEE DECIDED TO REPLACE WORD "WARFARE" WITH WORDS "MILITARY OPERATIONS" (AND NOT WITH WORD "ATTACKS") BY VOTE OF 10(US) (FOR WORD "ATTACKS")

-53-5. COMMITTEE DECIDED TO ADD WORDS "AGAINST THE ADVERSARY"
BY VOTE OF 31(US)-22-11. COMMITTEE DECIDED NOT TO DELETE
WORDS "ON LAND" BY VOTE OF 33-35(US)-4. PARA WOULD THEN
HAVE READ: "THE PROVISIONS CONTAINED IN THE PRESENT
SECTION APPLY TO ANY LAND, AIR OR SEA MILITARY OPERATIONS
AGAINST THE ADVERSARY ON LAND WHICH MAY AFFECT THE
CIVILIAN POPULATION, INDIVIDUAL CIVILIANS OR CIVILIAN
OBJECTS." HOWEVER, DEBATE THEN DEVELOPED WHETHER WORDS "ON
LAND" SHOULD BE THUS PLACED AT MIDDLE OF PARA OR PLACED AT
END OF PARA AS IN ORIGINAL ICRC TEXT. SHARP DEBATE ENSUED,
WITH SOME DELEGATIONS ARGUING THIS WAS MATTER OF SUBSTANCE.
SYRIAN MOTION TO SEND THIS PARA BACK TO WORKING GROUP
CARRIED BY VOTE OF 41-21-17(US). THUS, WHOLE OF ARTICLE
44 NOT ADOPTED. IF WORKING GROUP CONSIDERS THIS ISSUE AND
FULL COMMITTEE SUBSEQUENTLY CONSIDERS IT AT ITS LAST MEETING
MARCH 26, COMMITTEE MAY BE IN POSITION TO ADOPT ARTICLE 44.
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